SECRET/SENSITIVE

POLITICAL AND ECONOMIC POLICY TOWARD LIBYA

SECRET/SENSITIVE

Political and Economic Measures

There is no clear-cut division between the political, economic, and military measures available to deal with Qadhafi. Steps already taken to increase military assistance to threatened regional friends indicate a political resolve on our part and carry a political message to Qadhafi, in addition to the practical effect that they have in increasing the capabilities of the states involved. We are examining further political steps such as organizing opposition to the OAU summit in Libya, the establishment of Radio Free Libya, further controls on travel by Libyans, travel by US citizens to Libya, etc. We are offering logistical and financial support to the OAU Peacekeeping Force for Chad. If Libyan withdrawal from Chad is incomplete, we will examine further steps in Chad.

At issue here is whether economic measures should be considered for the political message that they, too, can convey. Economic sanctions by one country generally have been ineffective in changing the behavior of the target country. Nevertheless, economic measures do convey a political signal. They also tend to involve less risk of escalation, reprisal, and irreversibility.

The basic facts that recommend serious consideration of the use of economic measures to send a strong signal to Qadhafi are:

- o Our efforts to convince other nations to restrict military relevant commercial transactions with Libya have met with mixed success, because of the importance of the Libyan market for their defense industries and perhaps because of our own continued dealings with Libya.

- o In 1980 the United States purchased 40% of Libya's oil exports, paying Libya $10 billion in annual revenues. At the current rate, US oil imports from Libya would run about $2.6 billion a year based on sales of August-October 1981. Libya's total annual sales at this rate would be $9.2 billion. Under current oil market conditions, Libyan oil revenues have declined considerably; this has put Libya in a tight cash-flow position for the near-term and led it to borrow in international capital markets. Libya still has reserves totalling $16 billion.

- o Libya uses its oil revenue for campaigns of terrorism, including assassination plots against our own public officials, subversion of its neighbors, and external aggression.

- Libya also uses its oil revenue to purchase vast quantities of advanced Soviet weapons with deliveries running $1 billion in 1981 and estimated at $2.3 billion this year. Libya is the largest recipient of Soviet weapons and accounts for one fifth of Soviet arms exports to the Third World.

- While the evidence is unclear, we cannot discount the possibility that the excessive quantitites of Soviet armaments deployed in Libya are "pre-positioned" there to serve future Soviet purposes directed against western interests in the Mediterranean, the Persian Gulf, and in Africa.

- This places the United States in the embarrassing position of indirectly funding a substantial array of Libyan (and potentially Soviet) activity that is directly anti-thetical to our national interest and to the interests of the industrial democracies, more generally.

By enacting an oil embargo or broader economic measures directed against Libya, the United States would be able to make a powerful statement -- to Qadhafi, to regional friends, and to the rest of the world -- that we would not conduct "business as usual" with an international outlaw.

There is disagreement as to whether economic steps by the US would affect Qadhafi's behavior. The two positions are:

- The necessary impact would have to be on Qadhafi's capabilities, rather than on his intentions. We have less economic leverage over Libya now than we did in 1980 -- when we took 40% of Libyan exports and paid them $10 billion -- and it is highly unlikely that this pattern will be repeated in the near-term. To affect his capabilities, however, an economic boycott would have to have the cooperation of our allies to have a sufficient impact. Because they differ with us on the advisability of using economic sanctions, the cooperation of our allies in this matter is not likely to be forthcoming. Even if it were, Qadhafi would always be able to find other customers for his oil, merely by manipulating its price, and the Soviets and Eastern Bloc countries would be only too willing to come to his aid, for mutual benefit.

o Unilateral US economic action, in the service of our political objectives, could be effective in altering Libyan behavior by demonstrating to regional states, the Soviets, Libyans, and our own people the seriousness with which we view Libya's lawless and aggressive behavior. This action would be viewed in the context of the other measures we have taken to isolate Qadhafi and to call attention to the danger to international order posed by Qadhafi's support of terrorism and other aggressive actions. The willingness of the United States to put foreign policy goals ahead of its commercial interests would dramatize the threat we believe Qadhafi poses. It would also demonstrate US leadership and determination in meeting it. Not until we deny our own monies to Qadhafi's fund for terrorism and arms will we be free of charges of hypocrisy. Then we can begin to serve as a model for other states that we are asking to incur financial loss by limiting interaction with Libya -- particularly in the nuclear and arms supply areas. Thus, while the US action would be unilateral, it would exert a certain moral suasion upon our allies.

Economic effects of US actions would vary with time and with the state of world oil markets. Over the near-term, the impact of unilateral US actions would (for the reasons noted above) be minimal. However, over the medium-term, the withdrawal of US personnel in particular could impose some dislocations in Libyan oil production and the Libyan economy. These medium-term effects referred to above would have the particular advantage, from our point of view, of putting a crimp in Qadhafi's ability to support subversion of his neighbors, just at the time when these efforts seem to have been gaining in momentum. Such problems would not likely be lasting, as Libya restructured its market for oil and its source of technology over the long-term.

Additional arguments against economic sanctions include:

- o The Administration would be asking one part of the private sector to bear the costs of sending foreign policy "signals". Taking such steps may be interpreted as being contrary to Administration economic policies.

- o Possible consequences of economic sanctions would be confiscation of US-owned assets, some insurance claims against OPIC, and court suits.

- o Sanctions tend to persist long past their limited usefulness because reversing them would convey the wrong political message.

Economic Steps

The economic steps are intended to be carried out in a phased program, with due regard for the likelihood of net advantage to U.S. interests, and with a review of each succeeding step before it is implemented. Step 1 can be put into effect immediately, while the subsequent ones will be implemented at the appropriate times, for example, at 30-60 day intervals. Timing will be dependent in particular on the need to allow sufficient time for the OAU-sponsored Peacekeeping Operation (PKO) to be put in place in Chad. Timing may also be affected by other, unforeseen circumstances, such as Libyan provocations that may occur. Consultations with our allies on our plans for dealing with the Libyan threat would begin immediately. Our allies would be encouraged to join us in these steps, and, in any event, to do nothing to undercut them.

There may be legal difficulties in implementing some of the following steps.

Step 1: Voluntary Withdrawal of American Personnel and Minimization of Sales and Purchases of Libyan Products

We should encourage those corporations who have American nationals stationed in Libya to withdraw these Americans from Libya voluntarily. This should be done through an immediate appeal by the President to the CEO's of all such oil corporations, and to representative CEO's of other companies which do business in Libya, including any companies that employ significant numbers of Americans in Libya. The goal would be to remove potential U.S. hostages from Libya and thereby to lay the basis for any necessary further U.S. actions against Libya. Libya would also lose the benefit of technical skills of U.S. personnel, although they could be replaced. We should also encourage all such companies to reduce to a minimum their sales and purchases of Libyan products.

At the same time, we should ask US companies which purchase Libyan oil to shift to other suppliers such as Nigeria, advising US oil companies that the US government will no longer accept Libyan crude for the SPR. Informal USG efforts of this type would add to the pressures which have already reduced purchases of Libyan crude; once these companies have signed contracts with other suppliers, Libya will have difficulty winning them back. Encouraging shifts to other suppliers could further reduce Libya's exports; it would not provide a clear target for Libyan retaliation against US personnel and assets nor a clear provocation engendering sympathy for Qadhafi, and it would offer some possibility of obtaining cooperation from foreign oil companies without straining relations with our allies. Company cooperation is uncertain, of course, and a reduction in Libyan prices or some tightening of the oil market would discourage compliance. There is a significant difference between this option and the forthcoming ones.

Step 2: Mandatory Withdrawal of US Business Personnel from Libya

There are no simple and dependable means of ensuring the withdrawal of all US business personnel from Libya.

This step includes several legal steps designed to bring about the withdrawal of US business personnel. These steps might be taken individually or in conjunction with other options discussed in this paper. Several of those options involve novel uses of statutory and regulatory authorities. Their implementation would require further legal and factual analysis by the agencies concerned in order to ensure a clear legal basis which would withstand even preliminary challenges. The steps are described at Tab A. They include:

- o Impose administrative and/or criminal penalties on persons employed by United African Airlines,
- o Impose restrictions on use of US passports for travel to Libya, and
- o Seek to compel or promote the withdrawal of US business personnel from Libya as a prerequisite to additional economic measures under IEEPA or the Export Administration Act.

Consequences of Regulatory Action. The oil companies have received repeated appeals from State Department officials to withdraw their personnel from Libya. Yet another, higher level appeal would precede any legal declaration or action under the Export Administration Act by several weeks to permit further "quiet withdrawal." Exxon is now withdrawing totally, Mobil may be taking similar action, but the other companies have not yet followed suit. Only 71 of Exxon's 1920 person work force are US citizens, however, and most of the 429 other foreign workers and the 1400 Libyans will remain behind. One company, Occidental, is very unlikely to withdraw personnel unless required to by some US Government mandatory action.

Some oil companies still operating in Libya may prefer explicit US Government regulatory action limiting their operations as opposed to unofficial pressure for a "voluntary withdrawal." Such official action would place them in a better position with their stockholders and insurers, and would facilitate later re-entry into Libya. On the negative side, however, Libya may respond to official US action by harrassing those who wish to leave; nationalizing US oil company assets there; or by other negative actions aimed specifically at the United States.

Although we cannot rule out the possibility that US action to reduce the presence of US employees alone would create a hostage situation, it is much more likely that Qadhafi will not take the sort of action that would scare off other westerners and threaten him with US military action. In any case, we should give prior warning and explanation of US action regarding our citizens to selected allies and friends.

The oil companies have an investment in Libya with an estimated replacement value of $2.5 billion. Current book value is substantially lower, possibly less than $200 million. (Nationalized assets can be written off against taxes by the companies at a rate of 46%.) Furthermore, the companies would likely be foregoing substantial future earnings if forced to leave Libya. We could come under pressure from the companies and the Congress to obtain compensation from Libya for any nationalized property at its fair market value.

The most prominent arguments in favor of this step are that it would prepare the way for stronger measures -- both economic and military -- if we should decide to undertake them at a later date and it would substantially reduce the potential hostage problem. We should accept for planning purposes that it will probably not be possible to eliminate all potential hostages.

Step 3: A Unilateral US Oil Embargo

An oil embargo could be accomplished through the application of Section 232(b) of the Trade Expansion Act of 1962, as amended, on the ground that US dependence on Libyan oil constitutes a circumstance that threatens to impair national security.

Before the President takes such action, the Secretary of Commerce must perform a study which shows that oil is being imported from Libya "in such quantities and under such circumstances as to threaten the national security." While our levels of oil imports from Libya are now at a substantially reduced level, the importation of oil from Libya continues to provide revenues which Libya can use to finance international aggression and terrorism.

Alternatively, IEEPA could be used as legal authority, but because of its broad scope, this would raise serious concerns among our allies and other oil producers.

The advantages of imposing a unilateral oil embargo are that: it would be an action totally within our control; it would make a strong political statement that would receive wide publicity; we would not have to expend precious capital and risk straining the western alliance by trying to achieve allied co-operation. This time of relatively weak oil markets may be especially appropriate for US companies to switch suppliers.

Disadvantages are that: such action would undermine the credibility of the position we have taken with oil producers that oil should not be used as an instrument of foreign policy; Qadhafi could exploit the economic ineffectiveness of a US-only oil embargo for his own propaganda purposes (e.g., he might attempt to characterize the US as impotent, although we could reduce his ability to do so by emphasizing that the purpose of our embargo is to disassociate the US from Libyan activities, not necessarily to injure the Libyan economy); one portion of the US economy would feel itself bearing an undue share of the cost of supporting our policy against Libya; a US-Libyan "confrontation" of this sort may redound to Qadhafi's advantage by drawing further attention to him; and US action against Libya may move Qadhafi even closer to the Soviets. Most of our Allies might deride the US for hurting itself economically without making much of an impact on Libya, and would fill the economic void themselves.

From a policy standpoint, the Trade Expansion Act would clearly be the preferable legal basis for an oil import ban. The alternative of invoking IEEPA raises the spectre of a broader embargo extending to US subsidiaries overseas, and would unnecessarily concern allied governments and investors. IEEPA would make sense as a basis for restricting Libyan oil imports only as part of an overall prohibition of transactions with Libya.

Following Steps 1 and 2, this action can be conceived as one in a series of graduated steps against Qadhafi, each of which would be reviewed in light of previous experience and ongoing Libyan behavior.

Step 4: An Embargo of US Exports and Disposition of Equity in Libya on Foreign Policy Grounds

The US would, under the foreign policy provisions of the Export Administration Act, prohibit to the maximum extent allowed by the Act, US exports to Libya. Most US direct sales to Libya are of machinery and transportation equipment about half of which is related to oil production. Though this option would not damage Libya to any great extent, US exports to Libya run about $500 million a year and it would be a symbol of our willingness to cut all ties.

The commercial cost to the US may be greater than the $500 million a year in exports foregone. Other countries might perceive the US as an unreliable supplier of goods and services and may shift to more reliable European and Japanese suppliers, as they have tended to do following our imposition of controls on sales to Iraq and Syria.

The political cost lies in our practice of limiting re-export by Europeans (and others) of goods or components of US origin. Europeans resent what they see as extraterritorial intrusion in their commercial transactions. We could expect little Allied support. At the beginning, to avoid creating a US/European problem, we would have to avoid enforcing controls on third countries, though in time we could not avoid this.

In addition, as part of this step, we should consider the legal basis under the IEEPA for effecting the disposition by U.S. companies of their equity in Libya.

A

Approved For Release 2008/07/28 : CIA-RDP84B00049R000200260007-0

Option 2: Withdraw U.S. Business Personnel from Libya

As indicated in the basic policy paper, this option includes several legal steps designed to bring about the withdrawal of U.S. business personnel. These steps might be taken individually or in conjunction with other options discussed in this paper. Several of those options involve novel uses of statutory and regulatory authorities. Their implementation would require further legal and factual analysis by the agencies concerned.

A. Impose administrative or criminal penalties on persons employed by United African Airlines under the Export Administration Act: Violations of regulations or orders issued by Commerce pursuant to the Export Administration Act are punishable by the imposition of administrative penalties (fines and denial of export licenses) or criminal sanctions.

UAA has been determined by Commerce to be ineligible as a recipient of U.S. exports. Commerce regulations prohibit any person from providing U.S. origin goods or technology to such a "denied party." Therefore, persons providing such technology in the form of services to UAA might be charged with a violation of the regulations on this ground.

Under the regulations, aiding or abetting violations of the export controls imposed pursuant to the Act is itself a violation. Some of the U.S. civilian type aircraft used by UAA have been transferred to Libya in violation of Commerce Department export controls. Use of such aircraft with knowledge of the violation is a continuing violation under the regulations. Commerce might therefore charge United States persons working for UAA in the use or servicing of illegally obtained aircraft with aiding and abetting such violations.

Such actions would constitute novel applications of the Act, and enforcement could prove problematic given the difficulty of obtaining information on activities in Libya which could be used as evidence in on-the-record administrative proceedings governed by formal ajudicatory procedures or in judicial proceedings. Nevertheless, the very fact that we were seeking to impose sanctions in such cases could serve as a deterrent to additional U.S. nationals taking employment with UAA.

This step would be consistent with all of the other options described in this paper, but is not dependent upon the adoption of any other measures. It could be taken now in furtherance of our existing policy of denying support to Qadhafi's air carriers.

B. Impose Restrictions on Use of U.S. Passports for Travel to Libya: The Secretary of State has authority under the Passport Act of 1926, as amended, to make passports invalid for travel to, in or through "a country or area in which there is imminent danger to the public health or safety of U.S. travelers." Restrictions on the use of passports for travel to Libya could be justified in light of Qadhafi's manifest hostility towards the U.S., his willingness to encourage or permit placing in jeopardy the safety of U.S. individuals, as the mob attack on our Embassy which caused us to withdraw U.S. diplomatic personnel demonstrates, and the absence of any consular protective services in Libya for U.S. nationals.

It should be recognized, however, that this step alone could be of limited effectiveness. During the nearly 40 years in which geographic restrictions on travel by American citizens to one or more foreign countries were in force under the Passport Act, no successful prosecution was maintained for violation of geographic restrictions. This is so largely because in order to have a successful prosecution the Government must prove that a U.S. passport that was geographically restricted was used to enter the country to which travel was restricted. Persons travelling to geographically restricted areas generally work out arrangements with the country of destination to admit them without presentation of the passport; if the passport is not used, no violation occurs. Even if the passport is used, evidence on this point is not likely to be available to prosecutors in the United States.

Notwithstanding the potential prosecutional problem, an order under the Passport Act might be effective as a basis for withdrawal of U.S. persons by corporations otherwise inclined to such withdrawal but who simply desire a firm order from the Government to protect them from shareholder actions. Thus it would serve to reinforce efforts under Option 1 to encourage voluntary withdrawal. Moreover, it would constitute a means of buttressing our legal case in support of the steps described under C below, should one of those measures be approved.

C. Seek to Compel or Promote the Withdrawal of U.S. Business Personnel from Libya as a Prerequisite to Additional Economic Measures Under the International Emergency

Economic Powers Act or the Export Administration Act: U.S. policy making vis-a-vis Libya has been constrained by the presence of the significant number of U.S. business personnel there as potential hostages. Under this approach, we would seek in advance of imposing any additional economic sanctions to minimize the potential for hostage-taking by taking--in conjunction with passport restrictions--steps designed to force the termination of employment of U.S. nationals in Libya. Two potential legal bases are available; there are legal problems and uncertainties with each.

First, under the International Emergency Economic Powers Act the President may declare a national emergency to deal with any unusual or extraordinary threat to the national security, foreign policy or economy of the United States which has its origin outside the United States. Once he has done so, he has authority to preclude transfers of credits or payments by any person subject to U.S. jurisdiction, directly or indirectly, to any foreign country or its nationals as well as to prohibit importation or exportation of any property in which any foreign country or its nationals has an interest. This authority has been used in the past, specifically in the Iranian hostage situation, to restrict transactions related to travel, but only in the context of broad restrictions against transactions with the country involved.

Conceivably the President could declare a national emergency in narrow terms focused on the presence of the approximately 1500 U.S. citizens now in Libya. The argument used would be that Libya's record of support of terrorism and declared hostility against the United States places these Americans in circumstances that make them potential hostages, thereby constituting "an extraordinary threat to the effective conduct of U.S. foreign policy."

There are three concerns regarding declaration of an emergency which is narrowly based on the voluntary presence of U.S. persons in Libya. First, such a declaration accompanied by appropriate sanctions would be utilizing the power available under IEEPA as a pure restriction on travel, a purpose not clearly justified by its history. Such a narrow utilization of IEEPA power would provide an additional basis for challenging prosecutions for violation of such an IEEPA order. In addition, a narrow declaration would possibly require the issuance of a broader declaration if other IEEPA sanctions were deemed necessary at some point in the future, requiring the various procedures required by IEEPA to be followed. Finally, it can be argued that invocation of IEEPA on this basis could "cheapen the currency" and raise foreign apprehensions that IEEPA can or will be invoked to deal with situations of lesser gravity.

On the other hand, it can also be argued that declaring and explaining an emergency on such narrow grounds might minimize concerns of investors and other governments that might follow from declaring a broadly articulated emergency that would permit full-scale U.S. embargo of Libya possibly extending to foreign subsidiaries of U.S. firms.

On the basis of this declaration of emergency, the President would prohibit direct or indirect financial transactions by Americans with foreign persons related to the travel to or presence in Libya of Americans for business purposes. This would substantially inhibit business travel to or presence in Libya. Limiting the restrictions to business related travel would substantially increase the prospects for effective enforcement. To the extent that U.S. based and controlled firms are the employers, enforcement efforts could be focused on them rather than on individual employees.

By restricting only business related transactions, we would seek to avoid Constitutional challenges based on interference with first amendment freedoms.

A second alternative legal basis for applying pressure to achieve the withdrawal of U.S. personnel would be the Export Administration Act of 1979. That statute permits the President to prohibit the export of goods and "technology" for overriding foreign policy reasons. Restrictions on the export of "technology" have included restrictions on the export of technical services (e.g., technical services by computer technicians in the Soviet Union). We could prohibit the export of "technology" in the form of technical services performed in Libya by U.S. oil workers, aircraft pilots and service personnel.

This approach would have certain advantages from an enforcement standpoint. Administrative sanctions against U.S. firms, which failed to cease providing designated services, include general denial of export privileges. On the other hand, usable proof that an individual performed technical services utilizing U.S.-sourced "technology" while in Libya would be extremely difficult--if not impossible--to obtain.

The alternative legal bases described above are not mutually exclusive. If this step were decided upon, further review would be required to determine which of the two bases (or a combination thereof) would be most effective.